



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied on December 9, 2021 for compensation for a monetary loss or other money owed and to recover the cost of the filing fee.

The landlord's agent (agent) and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties did not raise any issue with respect to the service of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the cost of the filing fee?

Background and Evidence

This tenancy began on April 1, 2021, and ended on October 30, 2021. The monthly rent was \$3,000. The undisputed evidence is that the tenant paid the landlord the security deposit of \$1,500, by separate cheque on March 12, 2021, as required by the written tenancy agreement, filed in evidence.

The landlord's monetary claim is \$3,200, described in their application as follows:

I have sent \$1500 as security deposit return to the tenant on Nov 16. And Tenant also demanded for double payment along with the payment for resolution application totaling \$1600 more and I paid out on Nov 24. I have later found out that the Security Deposit cheque was never deposited in the first place and I still have the copy. The cheque has been expired after 6 months. I am also seeking \$100 compensation for the cost of this Dispute Resolution.

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The agent explained that they represent the owner as a property management company, and although the tenant did pay a security deposit of \$1,500 as required, by mistake they failed to deposit the cheque. The landlord submitted that on November 24, 2021, they realized their mistake in not depositing the security deposit cheque. As a result, as of September 12, 2021, they no longer had a security deposit from the tenant because the cheque is beyond 6 months old, and the bank will no longer accept the cheque.

The landlord's claim is based upon their payment of \$3,200 to the tenant, plus the filing fee of \$100. The landlord paid the tenant a cheque in the amount of \$1,500, on November 16, 2021, for the security deposit, \$1,500 on November 24, 2021, for doubling of the security deposit and \$100 for a tenant filing fee.

The tenant submitted a written statement in response to the landlord's application, in relevant part as follows:

Occupation of unit#1112 – [redacted] from **April 1, 2021 to October 31, 2021**. RTB-1 included in package and was signed by both the Agent – [redacted] and Tenant ([redacted]) on March 12, 2021. Security deposit of \$1500 was provided by check on March 12, 2021 as noted in RBT-1. Expectation was set that this check would be deposited prior to April 1, 2021 move in date.

Rent was paid on time and no issues with the landlord during the tenancy.

Move out of unit occurred on October 30, 2021. Condition inspection report was completed and signed off by both Landlord and Tenant acknowledging that there was no damage and that there will be no deductions from the security deposit. Tenant forwarding address was provided in move out notice as well as in the Condition Inspection Report (RTB-27).

Expectation was acknowledged and set at the time of move out that the security deposit of \$1500 would be returned within 15 days as per the following:

...

On October 31, 2021, received an email from the landlord (**Appendix A**) from the landlord advising that the security deposit will be returned and sent over via e-transfer. We were both of the understanding that the security deposit check was cashed and there was a balance owing.

...

On November 16, 2021 the security deposit was still not sent over via e-transfer. As per the RT policy, it must be returned within 15 days. If not returned within this timeframe, double the amount of the deposit would need to be provided to the tenant. An email was sent to the landlord advising them of this (**Appendix B**):

On November 16 (after my email), the security deposit in the amount of \$1500 was sent from the landlord. As the deposit was not returned within 15 days, a response was provided back to the landlord to send over the current amount owing which includes the double the security deposit \$3000. The landlord's admin assistant called asking for forgiveness and acknowledgement that due to accounting issues, she forgot to send over the deposit in time. **A follow-up email requesting full payment was again sent on November 17, 2021. (Appendix C)**

A formal dispute resolution was filed on November 23, 2021 with the Residential Tenancy Branch. The landlord phoned me on **November 24, 2021 acknowledging the error and requesting that we settle and close the case.** An email transfer was sent on November 24, 2021 in the amount of \$1500. **As a result, the dispute was formally withdrawn and closed.**

Almost 2 weeks later on December 6, 2021, I received an email from the landlord's assistant, suggesting that the original check was not deposited and for me to review my records. I was very surprised by this and furthermore enunciated the issue around lack of accounting controls within this agent's business. I asked for evidence from the landlord that the check was not deposited. I also advised the landlord that if the check was not indeed cashed,

then to do so at the earliest convenience to ensure the appropriate funds are in the hands of the agent. The agent then requested the return of the security deposit as the check was not cashed and return of the double security deposit.

As a result of this claim, on December 9, 2021 , I called the RTB and spoke to an Information Officer for advice on the matter. I was advised that since the deposit was provided, regardless of whether it was a check or cash, the onus is on the agent to ensure that the funds were received according to the signed agreements and that at the end of the tenancy that the deposit (in whatever form the payment was made) whether it being a cheque that was held, or cash, was returned to the tenant within 15 days. If the landlord does not return the security deposit within 15 days, then the tenant is entitled to double the deposit.

This was explained to the landlord; however, the landlord then changed his position to say, he can't cash the check as it is now stale. I advised the landlord that in some cases, banks do allow checks to be cashed even after 6 months. I provided him an excerpt (**Appendix D**) from **Payments Canada** stating that institutions may honor these items. I asked the landlord to provide me with proof that a) the landlord does have the check and b) evidence that the bank has rejected the check. I was also willing to send him the security deposit back via email transfer, if he returns the original check to me. **The guidance provided to me to ask for the original check is provided by the Canadian Financial Consumer Agency.** Excerpt from their website is provided in (**Appendix E**). The landlord has yet to send me the original check but only provided me with a screenshot which is not sufficient.

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The tenant also provided testimony in the hearing along the lines of their written statement.

Analysis

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

I find the landlord has failed to meet their burden of proof. The tenant was required to pay the landlord a security deposit and they did, regardless of whether the landlord deposited the cheque or not. I find the landlord submitted insufficient evidence that the tenant violated the Act or the tenancy agreement and therefore I find the landlord has not met their obligation under section 7(1) of the Act. It was the landlord's accounting error that caused this situation.

Additionally, I find the evidence shows the landlord failed to do whatever was reasonable to minimize their loss. A reasonable effort would be to check their accounting records prior to issuing the tenant a cheque for their security deposit. On top of that, the landlord further caused their loss to increase when they paid the doubling part of the security deposit. Had the landlord verified their accounting records, all they had to do meet their obligation under the Act of returning a tenant's security deposit was to return the original cheque to the tenant, as it had not been deposited, in this case. The landlord failed to do so.

As I find the landlord submitted insufficient evidence that the tenant violated the Act or tenancy agreement, that the tenant caused the landlord a loss or that the landlord failed to do whatever was reasonable to minimize their loss, I dismiss the landlord's application, without leave to reapply.

Conclusion

The landlord's application is dismissed, without leave to reapply, due to insufficient evidence.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 08, 2022

Residential Tenancy Branch